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DIGEST OF WATER POLLUTION CONTROL LEGISLATION: VIRGINIA

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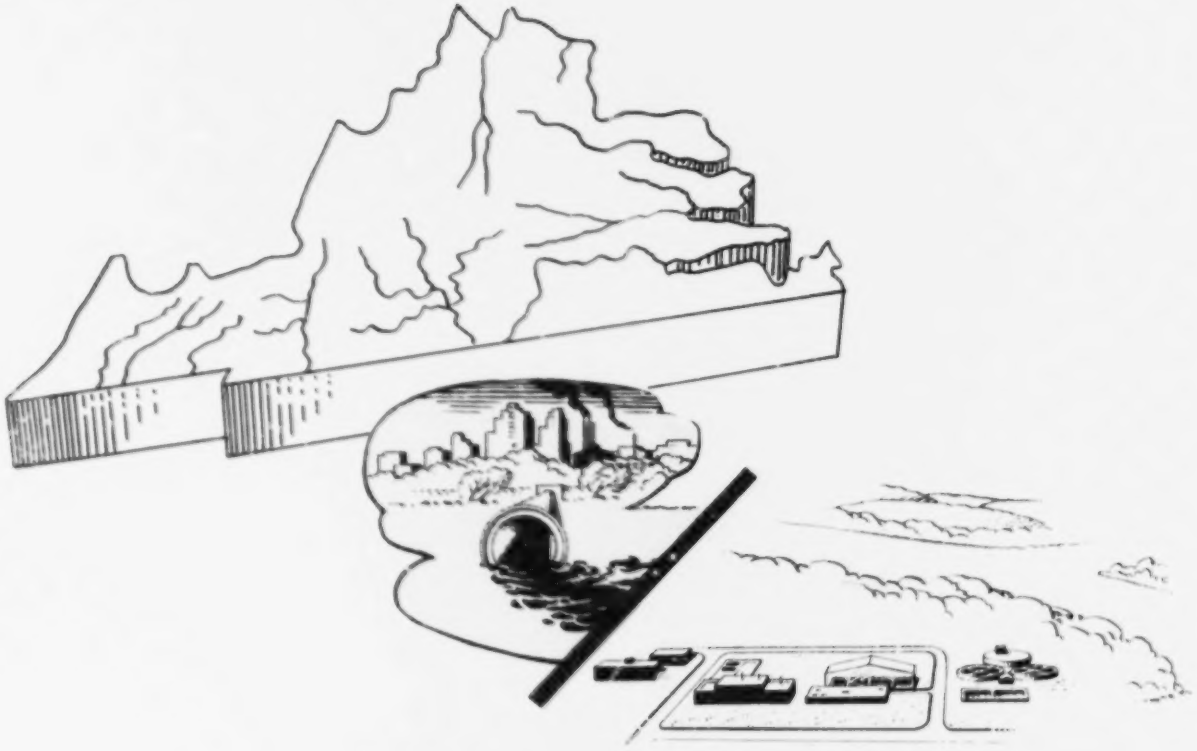

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by he Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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DIGEST OF VIRGINIA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The State Water Control Board has the primary function of controlling water pollution in the State (Sec. 62-23). 1/

The Act defines "pollution" as the discharge of sewage, industrial or other wastes, in such condition, manner, or quantity, as may cause waters of the State to be contaminated to such an extent as to make them detrimental to the public health or to the health of animals, fish, or aquatic life; unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply or unsuitable, with reasonable treatment, for such water supply by reason of impairment of potability; or unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. The discharge of sewage, industrial or other waste by any owner which alone would cause no pollution yet, in the aggregate of all such discharges by other owners causes the water to be polluted is "pollution" for the terms and purposes of the law (1956 Cum. Supp., Sec. 62-11 (6)).

The State Board of Health has general supervision and control over all water supplies and waterworks in the State insofar as the sanitary and physical quality of waters furnished may affect the public health (sec.62-43-61).

All sewerage systems and sewage treatment works are under the general supervision of the State Department of Health and the Board jointly (Secs. 62-39, 62-40).

1/ Citations in this digest refer to the Code of Virginia, 1950, and the 1956 Cumulative Supplement thereto, unless otherwise noted.

In 1954, the Virginia Legislature passed an Act allowing a taxpayer to take an accelerated amortization for tax purposes based on a period of sixty months of industrial waste treatment facilities completed on or after July 1, 1946, pursuant to any order, directive or other requirement or with the consent and approval of the State Water Control Board (1956 Cum. Supp., sec. 58-81.1).

II. ADMINISTRATIVE ORGANIZATION

State Water Control Board

1. Composition and organization

The Board is composed of five members appointed by the Governor and confirmed by the General Assembly for four-year terms, except as to those first appointed (Sec. 62-16). The Board meets regularly in March and November of each year, and special meetings may be held at any time or place determined by the Board, upon call of the Chairman, or written request of any two members. Three members constitute a quorum (Sec. 62-19). The Board elects its Chairman, and is empowered to employ an Executive Secretary who serves as Executive Officer of the Board (Sec. 62-22).

2. Powers and duties

a) Setting water quality standards

The Board is authorized to establish such standards of quality for any waters as it deems to be in the public interest, and such general policies relating to existing or future pollution as it deems necessary to accomplish the purposes of the Act; to modify, amend or cancel any such standards or policies and to take all appropriate steps to prevent pollution contrary to the public interest or to such standards and policies (Sec. 62-23(3)).

b) Issuance of certificates and review of plans and specifications

The Board is authorized to issue certificates for the discharge of sewage, industrial and other wastes into State waters, to prescribe conditions with respect to same, and to revoke or amend such certificates (Secs. 62-23(5), 62-25).

Anyone intending to enlarge an existing industry or employ new processes which would result in the discharge of industrial wastes into State waters and cause pollution, must first submit plans and specifications to the Board for approval. If the Board approves the same, it issues a certificate to the owner to proceed with construction (Sec. 62-28).

Anyone who on July 1, 1946 was discharging industrial wastes or sewage must, on the request of the Board, apply for a certificate to continue such discharges within 12 months of such request. The Board issues a certificate for an indefinite period; such certificate may be revoked upon failure to comply with reasonable requirements for the reduction of pollution. No certificate may be issued for the discharge of untreated sewage which would result in the pollution of clean waters of the State (Secs. 62-26, 62-27).

c) Enforcement

After July 1, 1946, no one is permitted to construct or operate any establishment which, in its operation, results in the discharge of industrial wastes which would be discharged into and pollute any State waters unless such person first provides adequate treatment works for such wastes approved by the Board so that when discharged into the State waters, its effluent does not create a detriment to the public health or to animal or aquatic life or prevent the use of water for domestic, industrial or

recreational purposes. The owner or operator of such establishment may be required to install treatment works approved by the Board for wastes or for the disposition of solids in such wastes. When the Board is of the opinion that the discharge of industrial wastes is not detrimental for the above-mentioned purposes, it may grant a certificate for the discharge of such wastes; however, the Board may not issue a certificate authorizing the discharge of untreated industrial wastes into any State waters deemed by the Board to be clean, except where such wastes consist of insoluble mineral materials heavier than water, or soluble materials whose presence results from natural conditions and not from manufacturing processes and which, in the opinion of the Board, will not materially interfere with the use of such waters for the support of animal, fish, or aquatic life, or as sources of public water supply. The Board may, in any such case, require the owner to provide adequate treatment of such wastes either before or after they have entered such waters, when the Board deems such treatment requisite to fulfill the purposes of the Act (Sec. 62-25).

The Board may issue orders directing any owner to secure, within the time specified therein, such operating results as are reasonable and practicable toward the abatement of pollution of State waters. It may, as a part of such order, require the owner to submit progress reports, not oftener than once a month, setting forth the steps taken toward the attainment of the required operating results. If, at any time after any such order has become final, the Board ascertains that progress is unsatisfactory, it may further direct the owner to install, within a reasonable specified time, such designated facilities and it may modify, amend, or cancel any such order. Such orders are entered only after hearing on at least 30 days' notice to the owner of the time, place and

purpose thereof. Orders do not become effective in less than 15 days after service on the owner affected (1956 Cum. Supp., sec. 62-23(8)).

When the Board has reason to believe that anyone is or is about to cause pollution of State waters it requests such person to supply it with plans, specifications and other needed information (Sec. 62-29). Anyone violating, failing, or refusing to obey any rule, regulation or order of the Board may be compelled to comply by injunction, mandamus or other appropriate remedy (Sec. 62-33). Anyone aggrieved by any rule, regulation, order or requirement issued by the Board under the Act or by the revocation of a certificate may, before the effective date of such order rule etc., file a petition with the Board asking for a rehearing, setting forth therein specifically wherein he considers such rule, order, etc. unreasonable or illegal (Sec. 62-35).

The Board may consider such petition either at a hearing or without a hearing. The petition for a hearing is deemed to have been denied unless it is acted on within 30 days after the date of filing. The filing of the petition for a hearing suspends the rule, order, etc. until the validity of such rule, order, etc. has been fully adjudicated (Sec. 62-36).

Anyone aggrieved by any rule or regulation may appeal to the Circuit Court of the City of Richmond, and in other cases to either the circuit court of the county or city or corporation court of the city wherein the establishment affected is located. The court hears the case de novo without a jury, and may approve, set aside or modify the rule, regulation, order or revocation of certificate. If a municipal corporation is interested in the proceeding, the judge of any court thereof does not pass upon such application, but enters such fact of record, and the clerk of the

court certifies the same to the Supreme Court of Appeals which designates a judge of some other circuit court or of some corporation court other than in such municipal corporation to act (Sec. 62-37).

A further appeal may be taken to the State Supreme Court of Appeals by the State or an aggrieved party (Sec. 62-38).

It is unlawful for anyone to cause pollution in any State waters in a manner contrary to any order adopted by the Board, which has become final under the provisions of the Act, or to discharge sewage, industrial or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board (1956 Cum. Supp., Sec. 62-41).

Anyone violating any provisions of the Act or failing to comply with any special final order of the Board, or a Court, on conviction is liable to a fine of not less than $50.00 nor more than $500.00 for each violation, and each day of continued violation after conviction constitutes a separate offense. The system, business or establishment causing the pollution in violation of the Act may be shut down as a nuisance (Sec. 62-42).

d) Conduct of studies, investigations and research

The Board is authorized to study and investigate all problems concerned with pollution of State waters and its prevention, abatement and control and to make reports and recommendations thereon (Sec. 62-23 (2)). It may also conduct scientific experiments, investigations and research to discover economical and practical methods for preventing pollution. It also makes investigations and inspections to insure com-

pliance with any rules or regulations or any orders which it may adopt or issue, and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance (Sec. 62-23(4)(6)).

e) Cooperation with other public and private agencies

The Board is authorized to cooperate with any public or private agency in the conduct of its experiments, investigations and research, and may receive funds which such agencies contribute as their share of the cost under any cooperative agreement (Sec. 62-23(4)).

f) Administrative powers

The Board is authorized to adopt rules and regulations governing its procedure (Sec. 62-23(7)). It issues special orders and certificates (Sec. 62-23(5); 1956 Cum. Supp., sec. 62-23(8)). The Board, or any member, agent or employee when duly authorized by the Board, may at reasonable times enter any establishment or property, public or private, for the purpose of obtaining information or conducting surveys or investigations (Sec. 62-30).

3. Exemption from operation of Act

The Board is authorized to designate any area within the State, or State waters, as a polluted area due to existing sewage discharge in such area. Each owner who contributes to such pollution is subject to all the provisions of the Act; provided that as to such area or State waters declared to be polluted, the Board may, in lieu of issuing an individual certificate to each owner therein, issue a special certificate, as to the pollution caused by all the owners in such area, to the appropriate authority of the political subdivision or subdivisions in which they reside. Any such certificate is subject to all the terms and conditions of the Act and applies only to existing sewage discharge. The Board may revoke or amend

any certificate in whole or in part as to any owner or group of owners in the area covered by such certificate (Sec. 62-27).

4. Preservation of existing rights and remedies

The Act is intended to supplement existing laws and no part thereof is to be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the State, except that the administration of any such laws pertaining to the pollution of State waters as defined in the Act is to be in accord with the purpose of the Act and general policies adopted by the Board; and it is hereby expressly provided that the provisions of the Act are not to affect any owner who discharges sewage, industrial or other wastes into a sewer or sewerage system which connects with or is a part of the sewerage system maintained and operated (a) by any sanitation district commission heretofore created and existing or hereafter created pursuant to the sanitation districts law of 1938, as amended, or (b) by any such district commission which may be created under any act passed at the 1946 regular session of the General Assembly (Sec. 62-14).

5. Statement of policy

The discharge by any owner not having a certificate issued by the Board, of sewage, industrial wastes, or any noxious or deleterious substances into State waters, which is detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic purposes, industrial consumption, or for recreation, is declared to be against public policy (Sec. 62-13).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful for anyone to poison any spring, well, or reservoir of water with intent to kill or injure another (Sec. 18-69).

It is unlawful for anyone to kill any species of fish by means of explosives, drugs, or poisons at any time in any of the waters of the State (Sec. 28-53).

It is a misdemeanor for anyone to use fish berries, lime or giant powder, dynamite, or any other explosive substance for the taking or destruction of fish in any State waters (Sec. 28-55).

No one is permitted to throw the dead body of an animal into any reservoir, spring, or running water ordinarily used for the supply of drinking water or domestic purposes. Violation is a misdemeanor (Sec. 62-45).

It is unlawful to defile or render impure or offensive the water used for the supply of any municipality of the State (1956 Cum. Supp., sec. 62-43).

The casting of any dead animal or any other noxious substance or matter, commonly known as bait, into any watercourse of the State, above tidewater, by which the health of any person along the watercourse is affected or the water is rendered impure or offensive is unlawful (Sec. 62-183).

IV. INTERSTATE COMPACTS

The Governor is authorized to enter into the following compacts on behalf of the State:

1. Potomac Valley Conservancy District (Sec. 62-62-67).
2. Ohio River Valley Water Sanitation Compact (62-67.1-.10).